

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
SOUTHERN DIVISION

DEVARY THOMPSON,

Plaintiff,

v.

WAL-MART STORES EAST, LP, and
JOHN DOE, a currently unknown
individual,

Defendants.

USDC Case No.:

Hon. _____

Case No.: 20-013029-NO

Hon. Muriel Hughes

MICHAEL A. CANNER (P72777)
CANNER LAW PLLC
Attorneys for Plaintiff
24423 Southfield Road, Suite 200
Southfield, MI 48075
Phone: 248-552-0400
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RICHARD G. SZYMCZAK (P29230)
PLUNKETT COONEY
Attorney for Defendant Walmart
38505 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
Phone: 248-342-7007
Facsimile: 248-901-4040
Email:
rszymczak@plunkettcooney.com

NOTICE OF FILING REMOVAL

NOTICE OF REMOVAL TO FEDERAL COURT
VERIFICATION

CERTIFICATE OF SERVICE

Respectfully submitted,

PLUNKETT COONEY

By: */s/Richard G. Szymczak*

Richard G. Szymczak (P29230)
Attorney for Defendant Walmart
38505 Woodward Ave., Ste.100
Bloomfield Hills, MI 48304
(810) 342-7007

Dated: January 25, 2021

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNT OF WAYNE

DEVARY THOMPSON,
Plaintiff,

v

WAL-MART STORES EAST, LP, and
JOHN DOE, a currently unknown individual,
Defendants.

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NOTICE OF FILING REMOVAL

TO:

MICHAEL A. CANNER (P72777)
CANNER LAW PLLC
24423 SOUTHFIELD ROAD, SUITE 200
SOUTHFIELD, MI 48075

WAYNE COUNTY CIRCUIT COURT
CLERK OF THE COURT
2 WOODWARD AVENUE
DETROIT, MI 48226

PLEASE TAKE NOTICE that this Defendant, WALMART STORES EAST LP, a foreign limited partnership, has this day filed a Notice of Removal, a copy

of which is attached hereto, in the office of the Clerk of the United States District Court, Eastern District of Michigan, Southern Division.

PLUNKETT COONEY

By: /s/Richard G. Szymczak

Richard G. Szymczak (P29230)
Attorney for Defendant
38505 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304
(810) 342-7007

Dated: January 25, 2021

PROOF OF SERVICE

The undersigned certifies that on January 25, 2021 a copy of the foregoing document was served upon the attorney(s) of record in this matter at their stated business address as disclosed by the records herein via:



Hand delivery
U.S. Mail
Email



Overnight mail
Facsimile
Electronic e-file

I declare under the penalty of perjury that the foregoing statement is true to the best of my information, knowledge and belief.

/s/ Ann Marie Gordon

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DEVARY THOMPSON,

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NOTICE OF REMOVAL TO FEDERAL COURT

TO: CLERK OF THE COURT
MICHAEL A. CANNER (P72777)

NOW COMES Defendant, this Defendant, WALMART STORES EAST LP, a foreign limited partnership, (hereinafter "WM"), by and through its attorneys of record, PLUNKETT COONEY, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this Notice of Removal based upon the following reasons:

1. On or about October 5, 2020, Plaintiff filed a civil action in the Wayne County Circuit Court, State of Michigan, bearing Case No. 20-013029-NO, in which Devary Thompson is the Plaintiff and WM is the Defendant. A copy of the Complaint filed in the Wayne County Circuit Court is attached to this Notice of Removal as **Exhibit A**.

2. This action, as alleged in the Complaint, is a suit brought by Plaintiff against WM for negligence and premises liability.

3. This action is between citizens of different states. The Plaintiff is a resident of the County of Wayne, State of Michigan (see Paragraph 1 of **Exhibit A**). WM is a Delaware limited partnership whose members are WSE Management, LLC and WSE Investment LLC, both of which are Delaware limited liability companies based in Arkansas). The sole member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, which is an Arkansas limited liability company with its principal place of business in Bentonville, Arkansas. The sole member of Wal-Mart Stores East LLC is Wal-Mart Inc., formerly Wal-Mart Stores, Inc., a Delaware corporation with its principal place of business in Bentonville, Arkansas.

4. WM is not a corporation created or organized under the laws of the State of Michigan and does not have its principal place of business in the State of Michigan.

5. The action filed by Plaintiff against WM is one involving complete diversity of citizenship under 28 U.S.C. § 1332 as a civil action between citizens of the State of Michigan and the State of Arkansas.

6. Plaintiff named a John Doe defendant, an unidentified WM employee.

7. The alleged date of incident is July 10, 2017.

8. The statute of limitations in this negligence action is three years. MCL 600.5805.

9. Plaintiff cannot now name the John Doe defendant because of the expiration of the statute of limitations

10. The Sixth Circuit has expressed that “[u]nder Michigan law, ‘John Doe’ complaints do not satisfy or toll the statute of limitations ” and amended ‘John Doe’ complaints do not relate back to the original complaint.” *Deruso v. City of Detroit*, 121 F. App’x 64, 65 n.1 (6th Cir. 2005).

11. The naming of the John Doe defendant does not impact the diversity of citizenship.

12. WM asserts it is more likely than not that the amount in controversy sought by Plaintiff exceeds the jurisdictional requirements of 28 U.S.C. § 1332(a) because Plaintiff specifically alleges total damages “in excess of \$25,000.00” as Plaintiff has declined to cap her damages below the jurisdictional limit.

13. Plaintiff’s Complaint sets forth allegations that she suffered:

- a. Injuries to her lower back, groin, right hip, nerves down her legs and other areas of the body resulting in surgery, diagnostic testing, therapy and medication;
- b. Pain and suffering, past, present and future;
- c. Mental anguish;
- d. Embarrassment, fright and shock;
- e. Loss of normal, social and recreational activities;
- f. Permanent scarring and disfigurement; and
- g. Impact and ability to earn income, loss of earning potential.

14. This Notice of Removal is timely filed within thirty (30) days after the Complaint was filed and served upon WM, as the Complaint was served on January 4, 2020.

15. A written notice of the filing of this Notice of Removal has been given to all parties as required by law, and a proof of service is attached hereto as **Exhibit B.**

16. A written notice of this Removal has been filed with the Clerk of the Court for the Wayne County Circuit Court, State of Michigan, as provided by law.

17. Based upon the foregoing, WM is entitled to removal of this action to the United States District Court for the Eastern District of Michigan, under 28 U.S.C. § 1441, *et seq.*

WHEREFORE, Defendant, WM, respectfully requests that it be allowed to effect removal of the within action from the 3rd Circuit Court for the County of Wayne, State of Michigan, to the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

PLUNKETT COONEY

By: */s/Richard G. Szymczak*

Richard G. Szymczak (P29230)
Attorney for Defendant
38505 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304
(810) 342-7007

Dated: January 25, 2021

UNITED STATES DISTRICT COURT
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VERIFICATION

RICHARD G SZYMCZAK, first being duly sworn, states that he is the attorney for Defendant and that the foregoing Notice of Removal is true in substance and in fact to the best of his knowledge, information, and belief.

Respectfully submitted,

PLUNKETT COONEY

By: /s/Richard G. Szymczak

Richard G. Szymczak (P29230)
Attorney for Defendant
38505 Woodward Ave., Ste. 100
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Dated: January 25, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, I electronically filed
Defendant's Notice of Filing Removal, Notice of Removal to Federal Court, Verification, and Certificate of Service with the Clerk of the Court using the ECF system, or in the alternative, I have mailed by United States Postal Service to any parties that are not ECF participants.

Respectfully submitted,

PLUNKETT COONEY

By: */s/Richard G. Szymczak*

Richard G. Szymczak (P29230)
Attorney for Defendant
38505 Woodward Ave., Ste. 100
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